HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 2940 OF 2006

DATED: 14.3.2006

Between:

Md. Sikander Khan

… Petitioner

and

The Government of A.P, represented

By its Principal Secretary,

Home Department, Secretariat,

Hyderabad and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.2940 OF 2006

ORAL ORDER:

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Heard the learned counsel for the petitioner and the learned Government Pleader for Home; perused the averments in the affidavit accompanying the writ petition and the counter affidavit filed by the 1st respondent and the accompanying documents. The writ petition is disposed of at the request of the counsel for the respective parties, at the stage of admission, as pleadings are on record.

The writ petition is filed with a prayer as follows:

> *"…declaring the action of the respondents in not taking action complaint given by the petitioner dated 7.1.2006 on the file of the 2nd and 3rd respondents as illegal, arbitrary, unjust and consequently direct the respondents to cause arrest and to investigate into complaint given by the petitioner dated 7.1.2006, as otherwise petitioner will continue to suffer serious threat to his life and property and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

The petitioner is a registered owner of an Auto bearing No. AP 13 W 4047 and a resident of premises in Golkonda, Banjara Darbaja, Hyderabad. According to him, on 28.12.2005 at about 11.00 pm, he returned home, parked his auto in front of his house and found the vehicle missing the next morning. He made enquiries and learnt that his auto was stolen by one Nushrat Hussain, son of an employee of the Secretariat in the Finance Department to whom, the petitioner claims to owe Rs.5,000/-. The petitioner further pleaded that he contacted Sri Nushrat Hussain and requested return of the auto, who refused to return the auto and had given the vehicle to some other driver for being used. The petitioner further states that he had gone to the 3rd respondent-the Station House Officer, P.S., Golkonda, to register a complaint against Sri Nushrat Hussain, but the 3rd respondent refused to register the

complaint. He thereafter lodged a complaint before the 2nd respondent-the Assistant Commissioner of Police, Asifnagar Division. Even thereafter, neither was the complaint registered nor was any action taken. After lodging of the complaint before the 2nd respondent on 7.1.2006, the petitioner alleges, the person against whom the complaint was made is threatening the petitioner claiming support of political leaders and police officials.

On the aforesaid pleadings, the petitioner approached this court. The complaint of the petitioner dated 7.1.2006 addressed to the 3rd respondent with a copy marked to the 2nd respondent with an endorsement of receipt by the 2nd respondent on 7.1.2006, reads as under:

"I beg to submit the following complaint for your necessary action.

1. *I am the registered owner of an Auto bearing No.A.P. 13W 4047. I am residing at the above address on 28.12.2005 at about 11.00 p.m, I came back home and parked my Auto in front of my house. On the next morning I found my Auto missing. On enquiry I came to know that my Auto was taken away by Sri. Nushrat Hussain, S/o Shaik Hussain, Working at Secretariat, Finance Department, to whom I owe Rs.5,000/-. I contacted Sri.Sri Nushra Hussain. And requested to return the Auto. He refused to return the Auto and he has given my Auto to some other driver and my Auto being driven.*

2. *I humbly submit that the act of stealing my Auto without my knowledge is very much high handed and illegal. The said person is threatening to kill me if I dared to complain any where because he is working in Secretariat. He further declared that no body can do any thing, and he will not return the Auto.*

3. *I, therefore, request you sir to register the FIR, restore my Vehicle and take action as per law and render justice to me. I am enclosing a copy of my R.C.book and driving license."*

The writ petition was filed on 15.2.2006 before this court. On 16.2.2006, the

learned Government Pleader for Home took notice on behalf of the respondents and requested adjournment to 17.2.2006 for obtaining instructions. On 17.2.2006, it was represented by the learned Government Pleader that the complaint of the petitioner dated 7.1.2006 has been registered on 17.2.2006. This court thereupon passed an order on 17.2.2006 directing the 1st respondent-the Principal Secretary, Home Department, to file an affidavit stating why the complaint dated 7.1.2006 was not registered till 17.2.2006, for nearly 40 days; and why the 2nd respondent failed to exercise the obligatory supervisory jurisdiction in the matter, despite a copy of the complaint having been lodged before the 2nd respondent, receipt of which was acknowledged by the 2nd respondent on 7.1.2006.

The 1st respondent has filed a counter affidavit on 13.2.2006. It is pleaded that the respondent had directed an enquiry into the delay in registering the FIR and called upon the Commissioner of Police, who in turn directed the Deputy Commissioner of Police (DCP), West Zone to enquire into the delay in the registration of the complaint. The 1st respondent's counter proceeds to aver that the DCP conducted a detailed enquiry, recorded the statement of the complainant and six witnesses and submitted his report to the Commissioner of Police on 12.3.2006; this report was forwarded to the answering respondent by the Commissioner of Police on 13.3.2006. The 1st respondent further pleads that the officer concerned ought to have registered the complaint as soon as he received it since the offence alleged is cognizable in nature.

The report of the Dy. Commissioner of Police dt 12.3.2006 discloses that the petitioner had visited the 3rd respondent Police Station on 4.1.2006 between 9.30 and 10.30 PM, and had met the Head Constable Ahmed Ali, who was on duty as a Station Writer. Though the petitioner had given a written complaint on 3.1.2006 there was no record at the Police Station verifying this fact. On receipt of the complaint

Ahmed Ali deputed a Constable to accompany the petitioner to the scene. The two went to the garage where the petitioner's auto was parked and at the instance of the Constable the garage owner was called but did not allow them to take the auto without the permission of a driver Moinuddin who had kept the auto in the garage. Then Moinuddin was called. He in turn called Nasrath Hussain (the person complained by the petitioner to have stolen his auto). Thereafter, the petitioner, the driver Moinuddin and Nasrath Hussain along with the Constable returned to the Police Station. The Head Constable asked them to come on the following day. On 7.1.2006 the petitioner and Nasrath Hussain came to the Police Station, were produced before the S.I. of Police and the S.I. advised them to settle the mater amicably treating the case as civil in nature. On the same day the petitioner re-lodged the earlier complaint dt. 3.1.2006 before the 2nd respondent, who endorsed the complaint to the Inspector of Police, Golconda for necessary action. On receipt of the endorsement, the Inspector of Police, Golconda endorsed on the complaint, on 8.1.2006 that the matter was civil in nature and the complaint should therefore be inquired into, disposed of and reported. After intervention of this court a case was registered against Nasrath Hussain on 17.2.2006. The said individual was arrested on 7.3.2006 and released on bail. This report of the DCP strangely records the conclusion that there was action on the complaint and the Head Constable had deputed a Constable to inquire into the matter, the suspect was summoned and investigation initiated (all without registering a complaint). This report in an obvious attempt to shield the concerned officers, suggests that the conduct of not registering the complaint could be attributed *"to the judgment of an individual officer (firstly by SI K.Srinivas Rao on 7.1.06 and there after by Inspector Golconda John Weseley) that the case was civil in nature because there was a financial dispute in between the parties. There was a dispute about payment of money which was due to Nasrath Hussain. Nasrath Hussain was claiming Rs.5,000/- from Sikander Khan but Sikander Khan's claim was that he had to pay only Rs.500, as he had already paid*

Rs.4,500/- though he had failed to produce any record to that effect."

The report ends by stating that lot of complaints are received at Police Stations relating to financial disputes, that the police machinery is used to settle personal scores and financial disputes and that it all depends on the judgment of an individual officer whether a cognizable offence has been made out or not. The report also states that complaints suggesting cognizable offence are being registered in Police Stations. The report ends with statistics of the cases registered and the instructions issued by the Commissioner of Police to all SHOs of City Police for registering cases of complaints disclosing cognizable offences.

The conclusions recorded in the report of the DCP implying that at best there was an error of judgment of the Inspector and Sub Inspector of Police, Golconda, that led to the non-registering of the complaint, suggests a collapse of even minimal standards of supervisory and administrative efficiency. No person even minimally conversant with the provisions of Criminal Law substantive and procedural, could have entertained a doubt whether the petitioner's complaints dated 3.1.06 and 7.1.06 made out a cognizable offence. In fact in his own language the petitioner in para-2 of the complaint specifically alleges **"stealing my auto."** If despite the clear allegation in the complaint the SI and CI entertained a doubt whether a cognizable offence was made out, it was certainly an instance where the DCP, if he did not share the same level of ignorance of law, ought to have concluded either that the SI and CI concerned were so incompetent and ill-informed about the relevant legal provisions as to be unfit to be in-charge of police administration or should have compellingly inferred that they had abdicated their statutory responsibilities consciously. In either even the report of the DCP should have recommended to the Commissioner of Police and for onward transmission to the 1st respondent, appropriate action against these officers and for detoxifying the system.

Another disturbing feature of this case is the singular silence in the counter affidavit of the 1st respondent on the aspect, why the Assistant Commissioner of Police (to whom the petitioner admittedly lodged the complaint on 7.1.2006), did not expeditiously act on the matter and direct the concerned police officer to perform the obligation under the Code of Criminal Procedure by registering the complaint. The 1st respondent's counter affidavit does not state that the ACP also entertained the same perception of law that the complaint did not disclose a cognizable offence and was about a civil dispute.

It does not appear to this court that the complaint of the petitioner dated 3.1.2006 and 7.1.2006 presented a factual complexity that defied the understanding of a SI of Police, an Inspector of Police and an Assistant Commissioner of Police as well. If such misunderstanding is shared by these three levels of officers, then the police administration in the State must surely be in a terminal state of dysfunction.

The facts in this case must also be viewed in the context of the statistical situation that on an average 5 to 6 writ petitions are filed every working day complaining of inaction of the police in registering complaints disclosing cognizable offence. This case merely illustrates the general complaint that the police force at the critical levels of Police Stations have liberated themselves from the discipline of law and of fidelity to obligations under the Code of Criminal Procedure. Such rank indiscipline appears also to receive support and protection by the higher echelons of Police administration as illustrated by the report of the DCP. This pathetic insensitivity to the requirement of unquestioned compliance with the Legislative commands and by the Police, fosters anarchy in our Republic.

Unfortunately the 1st respondent's counter does not state whether the 1st respondent, after a perusal of the report of the DCP dt 12.3.2006 was satisfied whether the conduct of the concerned police officers – the Inspector and Sub-

Inspector of, was legitimate or delinquent and if delinquent what administrative measures have been or are intended to be initiated to discipline such delinquency.

In para-7 of the counter affidavit the 1st respondent states that he had issued stringent instructions vide memo dated 13.3.2006 to the Director General of Police and to all the Commissioners and Superintendents of Police directing that all cognizable offences should be registered as soon as complaints are received. Hopefully the police force in the State would be more willing to comply with the instructions issued by the 1st respondent than the Force is willing to comply with the legislative mandate of the Code of Criminal Procedure. It is rather distressing that the commands of the Parliament do bind even a Sub Inspector of Police unless fortified by a memo of the Home Secretary. The 1st respondent does not also appear to be shocked or even distressed by this level of anarchy, as the total silence in the counter affidavit as to the action proposed to be initiated against the concerned police officer, permits this court to infer.

For 40 days the petitioner's complaint clearly disclosing commission of a cognizable offence was not registered as mandated by Sec. 154 Cr.P.C. His complaint to the 2nd respondent did not also yield the result. As a consequence the petitioner was constrained to file a writ petition with concomitant but avoidable expenditure and exertion. This led to an avoidable load on the already over-loaded docket of the High Court. Despite all these negative aspects on the public services, no administrative action is initiated against the clear offenders of public interest. In any event the petitioner suffered a legal injury and some officer or officers of the police administration in the State had defied the legislative mandate of the Code of Criminal Procedure, which led to the injury of the petitioner. The legislative mandate of the Cr.P.C. is binding. The obligation of a police officer to abide by this legislative mandate is unquestionable. Any police officer defying such legislative mandate must and invariably be severely disciplined. This much the Executive owes to affirm

its faith to the rule of law.

As the petitioner has suffered a clear injury as a direct consequence of the illegal conduct of police officers, this court considers it appropriate to allow the writ petition with costs of Rs.10,000/- (Rupees Ten thousand only) payable by the State of Andhra Pradesh to the petitioner within three weeks from today. The public exchequer should not however be mulcted for these costs. It is therefore the clear and unwavering obligation of the 1st respondent to forthwith initiate or cause to be initiated an appropriate level of administrative/disciplinary inquiry to ascertain the identity of the officer/officers whose grossly negligent or indisciplined conduct has led to the injury to the petitioner, defiance of the legislative mandate and the liability of the State to pay costs of Rs.10,000/- and further to take steps to recover such costs from the officer/officers so identified apart from any other administrative measures that are rationally found commensurate with the gravity of the misconduct.

The writ petition is allowed as above with costs.

A copy of the order be marked to the Chief Secretary to the Government of Andhra Pradesh.

Date: 14.3.2006 ----------

GODA RAGHURAM, J

cvm/pvsn